

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

WILLIAM FENECH, JONATHAN
HELMUTH, PINBALL RUN FILM,
LLC, JENNIFER SHENK, JEFFREY
SHENK, KENT OYER, and MX
GUARDIAN, LLC,

Plaintiffs,

vs.

KRISTINA HOGAN, THE ESTATE
OF BRANDON KEITH HOGAN,
PARADOX FILM GROUP, LLC,
FAST JET DISTRIBUTION LLC,
RED DEVIL SKYMASTER LLC, and
OTHER JANE DOE ENTITIES 1
THROUGH 10,

Defendants.

No. CV 21-59-H-SEH

ORDER

This case filed on August 3, 2021, asserts diversity jurisdiction under 28 U.S.C. § 1332.¹

Federal district courts have original diversity jurisdiction under 28 U.S.C. § 1332(a)(3) for civil actions between “citizens of different States [with] citizens or

¹ See Doc. 1 at 4.

subjects of a foreign state [as] additional parties” if the amount in controversy exceeds \$75,000, exclusive of interest and costs.² Each defendant must be a citizen of a state different from each plaintiff.³

Several defendants are named.⁴ Several unidentified “Jane Doe Entities 1 through 10” are also designated as defendants.⁵ Inclusion of such unidentified “Doe” defendants “destroys [diversity] jurisdiction” in an original federal action.⁶

Under Fed. R. Civ. P. 12(h)(3), “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Leave to amend nevertheless will be given.⁷

² See *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989).

³ See *In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1234 (9th Cir. 2008); see also 15A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 102.71, pp. 102-235 to 102-236 (3d ed. 2018) (“Section 1332(a)(3) establishes a requirement of complete diversity between United States citizens, but permits aliens on each side of the dispute as additional parties.”).

⁴ See Doc. 1 at 5–7.

⁵ Doc. 1 at 7.

⁶ *Garter-Bare Co. v. Munsingwear, Inc.*, 650 F.2d 975, 981 (9th Cir. 1980) (citing *Molnar v. Nat’l Broad. Co.*, 231 F.2d 684 (9th Cir. 1956); *Fifty Assocs. v. Prudential Ins. Co.*, 446 F.2d 1187, 1190 (9th Cir. 1970)); cf. 28 U.S.C. § 1441(b)(1) (2018) (providing that “the citizenship of defendants sued under fictitious names shall be disregarded” for purposes of diversity jurisdiction in the removal context).

⁷ See FED. R. CIV. P. 15(a)(2) (“The court should freely give leave [to amend] when justice so requires.”); *Carolina Cas. Ins. Co. v. Team Equip., Inc.*, 741 F.3d 1082, 1086 (9th Cir. 2014) (“A complaint should not be dismissed without leave to amend unless amendment would be futile.”).

ORDERED:

This case will be dismissed on October 29, 2021, unless the complaint is amended to properly plead jurisdiction.

DATED this 13th day of October, 2021.

A handwritten signature in black ink, appearing to read "Sam E. Haddon", is written over a horizontal line.

SAM E. HADDON
United States District Judge